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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)
Michael B. McGraw et al.)
Serial No.: 09/556,389)
Filed: April 24, 2000)
Confirmation No.: 7261)
For: PORTABLE MUSCLE STIMULATOR)
WITH PULSE WIDTH CONTROL)

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DEC 10 2002
OFFICE OF PETITIONS
Examiner: S. Getzow
Atty. Dkt. No.: 000309.00011
MCG/DJE:

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TECHNOLOGY CENTER R3700

REQUEST FOR RECONSIDERATION OF PETITION

Commissioner for Patents
Washington, D.C. 20231

Date: December 2, 2002

Sir:

The Petitioners, through undersigned counsel, respectfully request reconsideration of the Decision on Petition denying a refund of fees paid in the above-captioned application and contends that a refund of fees is appropriate in the present case.

The Decision cites MPEP §607.02, which in turn cites *Ex parte Grady*, 59 U.S.P.Q. 276, 277 (Comm'r Patents 1943). That case in fact supports the Petitioners' position. One of the criteria given for refund was "neglect or misinformation on the part of the office," *id.*, 59 U.S.P.Q. at 276. It should be plain from the facts set forth in the petition that neglect on the part of the office, in the form of the excessive review period after allowance, was the direct cause of the need to pay the fees for which a refund is sought. Therefore, under *Grady*, a refund is appropriate in the present case.

The Decision also cites *BEC Pressure Controls Corp. v. Dwyer Instruments*, 182 U.S.P.Q. 190, 192 (N.D. Ind. 1974). However, that case dealt with the clear statutory requirement to pay the issue fee. No such fact situation is presented in the present case.

For the reasons set forth above and in the previously filed Petition, the Petitioners respectfully submit that a refund is appropriate. Notice of such a refund is respectfully solicited.

Respectfully submitted,

Michael B. McGRAW et al

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